

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY eg D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

JAMES ADAMS,

Plaintiff,

vs.

PATRICIA GALLOWAY, et al.,

Defendants.

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No. 04-2605-B/An

ORDER DENYING DEFENDANTS MOTION TO DISMISS

Plaintiff, James Adams, prisoner number 290690, an inmate at the West Tennessee State Penitentiary ("WTSP"), Site III, in Henning, filed a pro se complaint pursuant to 42 U.S.C. § 1983 suing the Sergeant in charge of the WTSP Disciplinary Board, Patricia Galloway, Internal Affairs Officer Michael Ottinger, WTSP Warden Bruce Westbrook, and former Tennessee Department of Correction (TDOC) Commissioner Donal Campbell. Adams alleged that he was charged with a disciplinary offense by use of a state statute which did not apply to him and that his right to due process was violated in the manner in which his disciplinary hearing was conducted. He also claimed that he received ten (10) days punitive segregation, was assessed a fine of \$5, and was convicted of a Class A infraction. Adams further contended that, after exhausting his administrative appeals, he filed a writ of

certiorari in Lauderdale Chancery Court which was granted on July 29, 2003. He submits that the state court judge directed that the disciplinary infraction be expunged and the \$5 fine be returned.

On June 13, 2005, the defendants filed a motion to dismiss. They contend that because Adams failed to include a certified copy of the state court judgment, his contention that his disciplinary conviction has been overturned does not raise a cognizable claim under § 1983. Plaintiff has not responded to the defendant's motion to dismiss. Nevertheless, the initial complaint was verified in compliance with 28 U.S.C. § 1746, and the allegations therein must be considered in the Court's determination. Williams v. Browman, 981 F.2d 901, 905 (6th Cir. 1992).

When considering a motion to dismiss, the court must "treat all of the well-pleaded allegations of the complaint as true." Miree v. DeKalb County, 433 U.S. 25, 27 n.1 (1977); see also Saylor v. Parker Seal Co., 975 F.2d 252, 254 (6th Cir. 1992). The Court must construe all allegations in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). It must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Furthermore,

a pro se complaint should be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

Adams alleged that "[o]n June 21, 2002, [he] filed a Writ of Certiorari Petition for Common Law and Statutory Writ in Chancery Court, in connection with a disciplinary proceeding held on April 9, 2002." (Complaint, para. 17) He further stated:

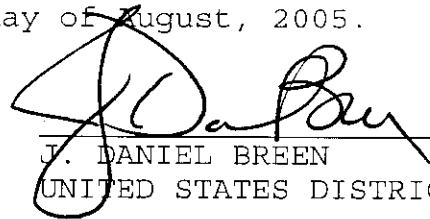
On July 29, 2003, Chancellor Court Judge Martha B. Bradsfield [sic] granted the Plaintiff Writ of Certiorari, and denied the defendant's motion to dismiss. The Court further found that the disciplinary board exceeded its jurisdiction and acted illegally, fraudulently, arbitrarily and capricious, by finding the Plaintiff guilty of a state law statute which did not apply to him. Further the Court ordered that the disciplinary infraction be expunged from the Plaintiff's record and that the \$5.00 fee be placed back into the Plaintiff's trust fund account.

(Complaint, para. 18).

Defendants' cited cases attached to the memorandum in support are not analogous to the facts of this case. The plaintiffs in those decisions failed to allege that their disciplinary convictions were overturned or "expunged." "Expunged" is commonly defined as stricken, obliterated, deleted, destroyed, or erased. Black's Law Dictionary (5th Ed. 1979). Plaintiff's complaint was verified in compliance with 28 U.S.C. § 1746, notwithstanding any failure to attach a copy of his state court judgement, certified or not. Defendants' vague and conclusory motion to dismiss does not deny or dispute Adams' allegation that his disciplinary conviction was overturned. Furthermore, no affidavit or exhibit has been

provided which rebuts the specific allegations of plaintiff's complaint despite defendants' access to plaintiff's disciplinary and state court records. Defendants may be able to demonstrate, on summary judgment, that plaintiff's disciplinary conviction was not overturned or his sentence credits not restored. On a motion to dismiss, however, the Court must accept the complaint's allegations as true. Accordingly, the motion to dismiss is DENIED.

IT IS SO ORDERED this 29th day of August, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



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This notice confirms a copy of the document docketed as number 18 in case 2:04-CV-02605 was distributed by fax, mail, or direct printing on August 30, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT